

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing adoption of a regulation is necessary for an immediate action to avoid serious harm to the public peace, health, safety or general welfare, within the meaning of Government Code Section 11342.545 and Public Resources Code Section 21080. The Department does not have a record of any person requesting a notice of regulatory actions under Government Code Section 11346.4(a)(1). Therefore, the provisions of Government Code Section 11346.1(a)(2) do not appear to be applicable to this emergency action as no one has requested such notice.

Specific Facts Showing the Need for Immediate Action

An adult gypsy moth was trapped in Alameda County. On August 21, 2008 (California Pest and Damage Record #1483615), an adult male gypsy moth was taken from a trap in the Oakland area of Alameda County. Finding a mature male gypsy moth is indicative of a possible incipient infestation of the moth in the Oakland area of Alameda County.

Gypsy moth, *Lymantria dispar*, is a serious pest of fruit, forest, and shade trees. In the eastern United States the pest has, by repeated defoliation, killed many trees. If left uncontrolled it can destroy native forest and wooded areas and, in orchard and urban areas, pesticide use may be necessary to eradicate the insect and prevent damage to crops and ornamental and native trees. A defoliated watershed increases both fire and erosion potential.

Gypsy moth is a pest of national concern. The United States Department of Agriculture also maintains a Federal Domestic Quarantine Notice against gypsy moth (Section 301.45, Title 7, Code of Federal Regulations) to prevent the artificial spread of this pest to uninfested areas.

The gypsy moth goes through four stages of development: egg, larva, pupa, and moth. It usually has one generation per year, overwintering in egg masses attached to trees,

stones, walls, logs, and other outdoor objects such as outdoor furniture, automobiles, and trailers. The female moths lay their eggs in the summer, in egg masses which may contain up to 1,000 eggs. In California, the eggs usually hatch in February or March, but may hatch earlier. The larvae are the destructive stage and feed until pupating in early summer. The moths emerge from the pupal or cocoon stage in 10 to 14 days as adult moths. The pests do not feed in the moth stage, but only mate and lay eggs. Hosts of the gypsy moth include oak, apple, willow, cherry, and maple.

If the moth were allowed to spread and become established in urban, agricultural or native forests, California's forestry and nursery industries would suffer losses due to decreased production of marketable crops, host trees, and shrubs; increased pesticide use; and loss of markets if other states or countries enacted quarantines against California products. Severe damage to native plantings and forests would also occur.

The entire County of Alameda is being proposed as part of the eradication area because it is the political division that provides the most workable eradication area boundaries for detecting and exterminating established gypsy moth infestations. Hosts and other possible carriers may have already been moved from the possible infested areas to another portion of the county. Additionally, moths may have already spread naturally from the possible infested areas, resulting in small infestations outside the Oakland area. To enable rapid surveys and treatments of any of these small infestations without frequent amendment of the regulation, the entire county should be established as an eradication area.

The gypsy moth has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. While the Department's compliance with the California Administrative Procedure Act and the California Environmental Quality Act (CEQA) are separate actions, they can be interrelated. Although adoption of specific regulatory authority can be the beginning of a project and therefore covered by CEQA, this regulation, for the reasons already set forth, constitutes a specific act necessary to prevent or mitigate an emergency as authorized by Public Resources Code section 21080, subdivision (b) (4) and Title 14, California Code of

Regulations Section 15269, subdivision (c). The regulation is also an action required for the preservation of the environment and natural resources as authorized by Title 14, California Code of Regulations, sections 15307 and 15308.

This amendment will provide authority for the State to perform specific detection, control and eradication activities against gypsy moth in Alameda County. This authority includes, “The searching for all stages of gypsy moth by visual inspection, the use of traps, or any other means.” It is immediately necessary to perform these activities within the Oakland area of Alameda County. To prevent spread of the moth to noninfested areas to protect California's agricultural industry and environment, if necessary, treatment activities against the moth have to begin by late winter. However, “The searching for all stages of gypsy moth by visual inspection, the use of traps, or any other means” must begin immediately to determine the scope of the possible infestations in Alameda County. Therefore, it is necessary to amend Section 3591.6(a) on an emergency basis.

Authority and Reference Citations

Authority: Sections 407 and 5322, Food and Agricultural Code.

Reference: Sections 5322, 5761, 5762 and 5763, Food and Agricultural Code.

Informative Digest

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law provides that the Secretary may establish, maintain, and enforce eradication regulations as he deems necessary to circumscribe and exterminate or prevent the spread of pests. The eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, and the means and methods which may be used in the eradication of said pest.

Section 3591.6(a). Gypsy Moth Eradication Area.

Existing regulations establish Los Angeles, Marin, Nevada, Orange, Riverside, San Diego, San Mateo, Santa Barbara, Santa Clara, Santa Cruz and Ventura counties as eradication areas for gypsy moth; set forth the hosts of the moth; and set forth the means and methods which may be used in the control and eradication of the moth in the eradication area. The proposed amendment to the regulation will establish Alameda County as part of the eradication area for gypsy moth.

The effect of the changes in the regulations is to provide authority for the State to perform detection, control and eradication activities against gypsy moth in Alameda County to prevent spread of the moth to noninfested areas to protect California's agricultural industry and environment.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that the proposed amendment of Section 3591.6(a) does not impose a mandate on local agencies or school districts and no reimbursement is required beginning with Section 17561 of the Government Code.

Cost Estimate

The Department has determined that the regulation will involve no additional costs or savings to any state agency because funds for state costs are already appropriated, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings or costs to local agencies or costs or savings to school districts under Sections 17500-17630 of the Government Code and no costs or savings in federal funding to the State.